

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

EXHIBIT

11

MICHAEL J. PRATT, Natural)
 Father of ERIC J. PRATT,)
 Deceased,)
 Plaintiff,)
) CIVIL ACTION
 V.) No. 2:13-cv-197
)
 NATIONAL RAILROAD PASSENGER)
 CORPORATION, d/b/a AMTRAK;)
 NEW ENGLAND CENTRAL RAILROAD,)
 INC.; MICHAEL E. KUJALA; and)
 WILLIAM C. RAE,)
 Defendants.)

D E P O S I T I O N

- of -

MICHELLE D. PENZA

taken on behalf of the Defendants on Tuesday, July 8, 2014, at Potter Stewart, Jr. Law Offices, P.C., 205 Main Street, Suite 8, Brattleboro, Vermont, commencing at 10:08 AM.

COURT REPORTER: JOHANNA MASSÉ, RMR, CRR

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1 15th, excuse me, 2012, you were describing for us that
2 you left your dad's house -- tell me if I don't have
3 this right.

4 A. Okay.

5 Q. Got into your car, which was parked behind his
6 car?

7 A. Yes.

8 Q. And then went through a process of backing it
9 up into a turnaround area?

10 A. Yes.

11 Q. And it being winter, did you have the heater
12 of your car on that -- that day?

13 A. Yes, I did.

14 Q. Was it on such that when you turned the
15 ignition, the heater was already in an on position?

16 A. If I remember correctly, it probably was,
17 because it was a cold day and I probably had it on
18 before I went to my father's.

19 Q. Okay. So you back in -- did you also -- did
20 you have the radio on that day?

21 A. I did.

22 Q. And what -- do you have a recollection of what
23 station you were listening to?

24 A. I don't remember exactly what I was listening
25 to, but normally I listen to country and western music,

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1 so I'm assuming that it was probably on a country and
2 western station.

3 Q. Is there a particular country-western station
4 that you would listen to when visiting your dad's
5 house?

6 A. Generally 104.9.

7 Q. You then -- just take us through the maneuver
8 as you left the area in which you had backed your
9 car -- into which you backed your car. What did you
10 then -- what did you then do?

11 A. After I backed into the turnaround spot, I
12 drove forward down the driveway, which is parallel to
13 the tracks.

14 Q. And as you did that, were you aware of the
15 presence of a train in the -- in the area?

16 A. I was not.

17 Q. When you got to the end of your dad's
18 driveway -- how long did that process take you, do you
19 expect, leaving the house until you got to the end of
20 the driveway? Is there any way to estimate that?

21 A. I have no idea. It didn't take too long. I
22 don't know. I'm terrible with estimates, so I don't
23 want to say.

24 Q. Okay. Don't guess. Don't guess. I assume
25 you were driving slowly down your dad's driveway?

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1 A. Oh, absolutely.

2 Q. And then you made a right turn to approach the
3 tracks?

4 A. Correct.

5 Q. Okay. So tell us what your experience was as
6 you approached the tracks -- this would be from the
7 west side, correct, of the tracks?

8 A. Correct.

9 Q. Going towards Route 142, correct?

10 A. Correct.

11 Q. All right. So tell us, if you would, what you
12 observed as you proceeded in that direction.

13 A. As I was leaving my father's driveway and
14 about to take the right-hand turn to go up the hill to
15 the tracks, I knew that that hill was slippery, number
16 one, because I had just come over it about a half an
17 hour or so before, and from past experience of living
18 there and visiting my dad, I know how slippery it can
19 be and I know that many times you have to kind of get a
20 running start in order to make it all the way up the
21 hill without having to back up and try again.

22 So as I was coming around the corner to the
23 right, I picked up a little bit of speed so that I
24 could make it up without slipping, and as I got
25 basically right at the tracks is when I looked to my

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1 right for trains and I saw the -- the light on the
2 train, and I slammed on my brakes.

3 Q. Okay. When you -- so you looked -- you looked
4 to your right and saw the train?

5 A. Correct.

6 Q. Was there some reason that you looked to
7 your -- did you look to your right first, or did you
8 look to your left and then your right, if you know?

9 A. If I remember correctly, I looked to my right
10 first.

11 Q. Was there any particular reason that you did
12 it that way?

13 A. It just -- that's just the way it happened.

14 Q. Okay. Were you aware that the train on its
15 Amtrak schedule would usually come from the south at
16 around 5 o'clock in the evening?

17 A. I was not familiar with the Amtrak schedule.
18 I haven't lived there since I was 18, and I'm now 41,
19 so I wasn't aware of what their schedule was.

20 Q. All right.

21 A. I'm aware that Amtrak uses the tracks, but I
22 didn't know that they were due to come through at that
23 time.

24 Q. So you looked to your right and you saw the --
25 the light of the train; is that what you saw?

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1 Q. Was there anything obstructing your view as
2 you looked to the right?

3 A. Just the train.

4 Q. Just the train. Okay. So when you looked to
5 your right and you saw the train, what did you next
6 observe? Or what did you next do?

7 A. Well, obviously when I saw the train, I
8 slammed on my brakes because I knew I was way too
9 close. I thought I was going to be hit. So many
10 things were going through my mind about -- I knew that
11 I needed to back away, but I believe I was in such a
12 panic that I wasn't capable of putting my car in
13 reverse, and I was also afraid that if I put the gear
14 into the wrong gear and ended up going forward, I
15 didn't want to get T-boned by the train, so I -- I
16 couldn't move. I was panicking and I was waiting for
17 impact. I thought for sure I was going to be hit
18 because I was that close.

19 Q. So you just froze, basically?

20 A. Yeah. And all at the same time, I see Kyle
21 and Eric, whom I didn't know at the time -- I still
22 don't know them, but I know their names. I saw them
23 walking from Route 142 up towards the tracks.

24 Q. Okay. So let me just stop you there. You see
25 the train. You're -- you react the way you described.

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1 Q. Okay. Do you have any explanation for your
2 not having perceived the horn to be blowing while
3 others reportedly did report that the horn was -- or
4 perceived that the horn was blowing?

5 MR. SULLIVAN: Object to the form of the
6 question.

7 Q. That's just a question to you. I mean, do you
8 have an explanation for it?

9 A. I don't have an explanation, no, but as I had
10 said to you this morning, I will go to my grave saying
11 that I never heard that whistle. Not once.

12 Q. I understand that. You appreciate the
13 difference between the horn blowing and you not hearing
14 the horn blow?

15 MR. SULLIVAN: Object to the form of the
16 question.

17 Q. Right?

18 A. I'm sorry. Can you ask me that in a different
19 way?

20 Q. Yeah.

21 A. I guess I'm not understanding what you --

22 Q. Yeah. I might hold a certain number of
23 fingers up for a while and you may not see it. You
24 understand the difference between seeing it and my
25 doing it?